IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 22610 of 2007(N)

AGAINST THE ORDER IN IA.5052/2007 IN OS.290/2006 of I ADDL.M.C.,ERNAKULAM
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PETITIONER:

T.S.KRISHNAKUMAR,S/O.SUBRAMANIAN, THOTTIYIL HOUSE,RESIDING AT SARALALAYAM, HOUSE NO.XV11/518,TRIPUNITHURA,NADAMA DESOM & VILLAGE,KANAYANNUR TALUK.

BY ADV. SRI.MATHEW SKARIA
SRI.JOSE THOMAS (PEEDIKAYIL)

RESPONDENTS:

SUBRAMANIAN,S/O.VELAYUDHAN,THOTTIYIL HOUSE,RESIDING AT SARALALAYAM,HOUSE NO.XVII/518, TRIPUNITHURA,NADAMA DESOM & VILLAGE, KANAYANNUR TALUK.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 22610 OF 2007

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Dated this the 24th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order in I.A.5052/07 in O.S.290/06. It is an application for amendment of the plaint. But a reading of the order would reveal that the Court has mainly considered only on the question of payment of Court fee, whether S.7(3) and S.7 (3A) has to be jointly complied with or not. I find from the amendment application that the plaintiff wanted to amend the relief portion, i.e., "In reliefs (A) and (B) the words "plaint schedule property", wherever it occurs, are to be substituted with the words plaint schedule building". If the said proposed amendment is allowed, then the plaintiff is absolutely justified in paying Court fee as contemplated under order 7(3) of the Court Fees Act. The Court cannot direct him to pay it under Section 7(3A) as well. Suppose the plaintiff is seeking relief only with respect to the building standing in the property, under ordinary circumstances, it is

a matter which has to be allowed for the reason that it is the plaintiff who is the master of a suit. Suppose such a relief cannot be granted, ultimately the plaintiff may have to suffer the consequences. The matter has not been considered in that perspective and since the respondent has not entered appearance I set aside the impugned order under challenge and direct the learned Munsiff, Ernakulam to dispose of the matter in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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